to open on signal from 5:00 a.m. to 9:00 p.m. and on 12 hours advance notice from 9:00 p.m. to 5:00 a.m. The Lafayette bridge presently is required to open on signal if at least 48 hours advance notice is given. This change is being made because of infrequent requests for opening the draws, and to standardize the advance notice requirement for all three bridges. This action will relieve the bridge owner of the burden of having a person constantly available to open the draws and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 11 August 1983, the Coast Guard published proposed rule (48 FR 36477) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 11 August 1983. In each notice interested persons were given until 26 September 1983 to submit comments. The proposal was to require at least four hours advance notice for opening the Eloi Broussard bridge and at least 48 hours advance notice for opening the New Flanders bridge. The Lafayette bridge was not involved in the proposed rule. 48 FR 36477 codified the proposed rule as § 117.245(j)(14). This final rule would now appear in § 117.509 of the renumbered sections established by 49 FR 17450 dated April 24, 1984.

Drafting information: The drafters of these regulations are Perry Haynes, Project Manager, and Steve Crawford, Project Attorney.

Discussion of comments: Nine letters of objection to the proposal were received in response to the public notice, expressing concern in two areas; namely, the effect of the proposal on the existing schedule of a small cruise boat presently operating through the bridges, and the effect on future water oriented recreational activities that may develop in the area. Meetings were held in May and June 1984 between LDOTD and representatives of the cruise boat organization and the local agency responsible for future development of boating in the area to discuss the proposed method of operating the bridges and the concerns of navigation. As a result, those concerns were satisfactorily resolved when navigational interests agreed with a proposal that LDOTD would operate all three bridges on four hours advance notice, thereby reducing from 48 hours to four hours both the proposed advance notice requirement for the New Flanders bridge and the existing advance notice requirement for the Lafayette bridge.

This modification to the rule as originally proposed has a possible adverse impact only upon the bridge owner. The owner has, however, been involved in formulating these final rules and has assented to the provisions contained in this rule. Moreover, this revision, which resulted from meetings between affected parties, will serve to enhance local navigation. Therefore, the Coast Guard finds that supplemental notice of the modified rule and public procedure thereon are unnecessary under 5 U.S.C. 553(b).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that, on average, fewer than one vessel per day uses the Eloi Broussard bridge, fewer than one per week uses the New Flanders bridge, and only one per month uses the Lafayette bridge. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by removing § 117.509(a)(6) and § 117.509(a)(7), and by revising § 117.509(b) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.509 Vermilion River.

* * * * *

(b) The draws of the following bridge shall open on signal if at least four hours notice is given:

(1) S733, mile 41.0 at Eloi Broussard.

(2) S3073 bridge, mile 44.9 at New Flanders.

(3) S182 bridge, mile 49.0 at Lafayette.

(33 U.S.C. 499, 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: July 25, 1984.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 84–21146 Filed 8–8–84; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Part 21

Equal Access to Justice

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: These regulations establish the procedures of the Department of Education (the Department) for implementing the Equal Access to Justice Act (the Act). The Act mandates that Government agencies establish uniform regulations enabling eligible prevailing parties in adversary adjudications before those agencies to apply for the award of fees and other expenses.

EFFECTIVE DATE: September 10, 1984.

FOR FURTHER INFORMATION CONTACT: Peter Wathen-Dunn, Division of Business and Administrative Law, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 755–1106.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act (Title II of Pub. L. 96–481, 94 Stat. 2325 (1980), 5 U.S.C. 504) was enacted by the Congress to diminish the deterrent effect on certain entities—individuals, partnerships, corporations, and labor and other organizations—of seeking review of, or defending against, unreasonable action by the Federal Government. The Congress provided that, in specified situations, prevailing parties in civil actions or administrative proceedings would be entitled to receive from the United States an award of fees for attorneys and expert witnesses and other costs.

The Act requires each agency, after consultation with the Chairman of the Administrative Conference of the United States, to establish by rule uniform procedures for the submission and consideration of applications for an award of fees and other expenses.

The regulations in this part apply to administrative proceedings only. Awards in civil actions are covered under section 204 of the Act (28 U.S.C. 2412).

The Department participated in meetings held by the Administrative

Conference to draft a set of comprehensive model regulations.

The Administrative Conference published its proposed model rules on March 10, 1981 (46 FR 15895) and solicited public comments. The Administrative Conference received and examined numerous comments from governmental agencies and other interested individuals and organizations. Adjustments were made to include some of the changes suggested, and the Administrative Conference published the final version of its model rules on June 25, 1981 (45 FR 32900).

The Department published proposed regulations on March 14, 1984 at 49 FR 9577. In its adaption of the model rules, the Department changed the order of various provisions to make it easier for applicants to use the regulations. The Department also made a number of changes to ensure that a minimal burden is placed on applicants.

In addition the Department—

- Omitted provisions having no application to the types of adversary adjudications conducted in the Department;
- Changed other provisions to reflect departmental policy more clearly; and
- Excerpted from the model rules definitions of various terms and collected them in these regulations under the section entitled "Definitions."

In general, the Department's regulations describe the parties eligible for awards, the types of adversary adjudications covered under the Act, the procedures used in the submission and consideration of applications, and the standards the Department uses to make awards.

Comments were received on the proposed regulations from one commenter.

Comment: The single commenter asked the Department to add a new section to the regulations to correspond to a provision that was included in the model regulations of the Administrative Conference. The Administrative Conference provision explained that agencies have the authority under 5 U.S.C. 504(b)(1)(A) to raise through rulemaking the statutory ceiling on hourly rates of attorneys.

Response: No change has been made. The Secretary has decided not to add the provision that was included in the Administrative Conference regulations. The authorization to raise the statutory rate, if exercised, would require the Department to engage in further rulemaking consistent with the procedure in 5 U.S.C. 553. The Secretary does not believe that a regulation is necessary or appropriate to engage in rulemaking which is authorized by statute.

Comment: The commenter also believed that the information requirement in § 21.31 of the regulations should be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980.

Response: No change has been made. The regulations of OMB implementing the Paperwork Reduction Act of 1980 specifically exempt information collected "during the conduct of an administrative action or investigation involving an agency against specific individuals or entities." 5 CFR 1320.3(c).

The Secretary has decided to delete proposed § 21.61, *Time for payment of awards.* This section unnecessarily limits the discretion of the Secretary in determining the timing of payments. Congress is currently considering an extension of the Equal Access to Justice Act. If Congress finds that such a limitation is necessary to ensure prompt payment, Congress may impose the limitation under the reauthorized legislation. Section 21.62 of the proposed regulations has been redesignated as § 21.61.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

List of Subjects in 34 CFR Part 21

Equal Access to Justice, Adjudications, Attorney fees, Claims, Expert witnesses, Lawyers.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: August 3, 1984.

T.H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance number does not apply)

March 14, 1984.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 21 to read as follows:

PART 21—EQUAL ACCESS TO JUSTICE

Subpart A—General

Sec.

Subpart B—Which Adversary Adjudications Are Covered?

Sec.

Subpart C—How Is Eligibility Determined?

Subpart D—How Does One Apply for an Award?

Subpart E—What Procedures Are Used in Considering Applications?

Subpart F—How Are Awards Determined?

Subpart G—How Are Awards Paid?

Authority: Equal Access to Justice Act (Title II of Pub. L. 96-481), 94 Stat. 2325 (5 U.S.C. 504).

Subpart A—General

§ 21.1 Equal Access to Justice Act.

(a) The Equal Access to Justice Act (the Act) provides for the award of fees and other expenses to applicants that—

(1) Are prevailing parties in adversary adjudications before the Department of Education; and

(2) Meet all other conditions of eligibility contained in this part.

(b) An eligible applicant, as described in paragraph (a) of this section, is entitled to receive an award unless—

(1) The adjudicative officer—or the Secretary, on review—determines that—

(i) The Department's position in the proceeding was substantially justified; or

(ii) Special circumstances make an award unjust; or

(2) The adversary adjudication is under judicial review, in which case the applicant may receive an award only as described in § 21.11.

(5 U.S.C. 504 (a)(1) and (c)(1))

§ 21.2 Time period when the Act applies.

(a) The Act applies to any adversary adjudication covered under this part and pending before the Department at any time between October 1, 1981 and September 30, 1984.

(b) The adversary adjudications referred to in paragraph (a) of this section include—

(1) Proceedings begun before October 1, 1981 if final departmental action has not been taken before that date; and

(2) Proceedings pending on September 30, 1984 regardless of when they were initiated or when final department action occurs.

(5 U.S.C. 504(d)(2))

§ 21.3 Definitions.

The following definitions apply to this part:

"Act" means the Equal Access to Justice Act.

"Adjudicative officer" means the deciding official who presided at the adversary adjuidication.

(5 U.S.C. 504(b)(1)(D))

"Adversary adjudication" means a proceeding—

(a) Conducted by the Department for the formulation of an order arising from a hearing on the record under the Administrative Procedure Act (5 U.S.C. 554);

(b) Listed in § 21.10; and

(c) In which the position of the Department was represented by counsel or by another representative.

(5 U.S.C. 504(b)(C))

"Department" means the U.S. Department of Education.

"Employee."

(a) This term means a person who regularly performs for an applicant services—

(1) For remuneration; and

(2) Under the applicant's direction and control.

(b) The term also includes, on a proportional basis, a part-time or seasonal employee who meets the conditions of paragraph (a) of this definition.

(5 U.S.C. 504(c)(1))

"Fees and other expenses" means an eligible applicant's reasonable fees and expenses—

(a) Related to the issues on which it was the prevailing party in the adversary adjudication; and

(b) Further described in §§ 21.33 and 21.50.

"Party" means a "person" or a "party" as those terms are defined in the Administrative Procedure Act (5 U.S.C. 551 (2) and (3)); that is, an individual, partnership, corporation, association, or public or private organization. The term does not include an agency of the Federal Government.

(5 U.S.C. 504(b)(1)(B))

"Secretary" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(5 U.S.C. 504 (b)(1) and (c)(1))

Subpart B—Which Adversary Adjudications Are Covered?

§ 21.10 Adversary adjudications covered by the Act.

The Act covers adversary adjudications under section 554 of Title 5 of the United States Code. These include the following:

(a) Proceedings to—

(1) Limit, suspend, or terminate the participation of institutions of higher education in student assistance programs authorized by Title IV of the Higher Education Act; or

(2) Impose a civil penalty on those types of institutions. (20 U.S.C. 1094(b)(1)(D) and (2))

(b) Compliance proceedings under Title VI of the Civil Rights Act of 1964. (42 U.S.C. 2000d *et seq.*)

(c) Compliance and enforcement proceedings under the Age Discrimination Act of 1975. (42 U.S.C. 6101 *et seq.*)

(d) Compliance proceedings under Title IX of the Education Amendments of 1972. (20 U.S.C. 1681 *et seq.*)

(e) Compliance proceedings under Section 504 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 794)

(f) Witholding proceedings under Section 592 of the Education Consolidation and Improvement Act of 1981. (20 U.S.C. 3872)

(g) Proceedings under—

(1) Section 5(g) of Pub. L. 81–874, as amended (Financial Assistance for Local Education Agencies in Areas Affected by Federal Activity). (20 U.S.C. 240(g)); or

(2) Section 6(c) of 11(a) of Pub. L. 81–815, as amended (An Act relating to the construction of school facilities in areas affected by Federal activities, and for other purposes). (20 U.S.C. 636(c) or 641(a))

(h) Other adversary adjudications that fall within the coverage of the Act.

(5 U.S.C. 504(c)(1)).

§ 21.11 Effect of judicial review of adversary adjudication.

If a court reviews the underlying decision of an adversary adjudication covered under this part, an award of fees and other expenses may be made only under Section 204 of the Act (awards in certain judicial proceedings).

(5 U.S.C. 504(c)(1); 28 U.S.C. 2412(d)(3))

Subpart C—How Is Eligibility Determined?

§ 21.20 Types of eligible applicants.

The following types of parties that prevail in adversary adjudications are eligible to apply under the Act for an award of fees and other expenses:

(a) An individual who has a net worth of not more than $1 million.

(b) A sole owner of an unincorporated business who has—

(1) A net worth of not more than $5 million, including both personal and business interests; and

(2) Not more than 500 employees.

(c) A charitable or other tax-exempt organization—

(1) As described in section 501(c)(3) of the Internal Revenue Code; and

(2) Having not more than 500 employees.

(d) A cooperative association—

(1) As defined in section 15(a) of the Agricultural Marketing Act; and

(2) Having not more than 500 employees.

(e) Any other partnership, corporation, association, or public or private organization that has—

(1) A net worth of not more than $5 million; and

(2) Not more than 500 employees.

(5 U.S.C. 504(b)(1)(B))

§ 21.21 Determination of net worth and number of employees.

(a) The adjudicative officer determines an applicant's net worth and number of employees as of the date the adversary adjudication was initiated.

(b) In determining eligibility, the adjudicative officer includes the net worth and number of employees of the applicant and all of the affiliates of the applicant.

(c) For the purposes of paragraph (b) of this section, the adjudicative officer considers as an affiliate—

(1) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant;

(2) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest; and

(3) Any entity with a financial relationship to the applicant that, in the determination of the adjudicative officer, constitutes an affiliation for the purposes of paragraph (b) of this section.

(5 U.S.C. 504(c)(1))

§ 21.22 Applicants representing others.

If an applicant is a party in an adversary adjudication primarily on behalf of one or more persons or entities that are ineligible under this part, the applicant is not eligible for an award.

(5 U.S.C. 504 (b)(1)(B) and (c)(1))

Subpart D—How Does One Apply for an Award?

§ 21.30 Time for filing application.

(a) In order to be considered for an award under this part, an applicant may file its application when it prevails in an adversary adjudication—or in a significant and discrete substantive portion of an adversary adjudication—but no later than 30 days after the Department's final disposition of the adversary adjudication.

(b) In the case of a review or reconsideration of a decision in which an applicant has prevailed or believes it has prevailed, the adjudicative officer stays proceedings on the application pending final disposition of the adversary adjudication.

(c) For purposes of this part, final disposition of the adversary adjudication means the latest of—

(1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer becomes administratively final;

(2) The date of an order disposing of any petitions for reconsideration of the final order in the adversary adjudication;

(3) If no petition for reconsideration is filed, the last date on which that type of petition could have been filed; or

(4) The date of a final order or any other final resolution of a proceeding—such as a settlement or voluntary dismissal—that is not subject to a petition for reconsideration.

(5 U.S.C. 504 (a)(2) and (c)(1))

§ 21.31 Contents of application.

(a) In its application for an award of fees and other expenses, an applicant shall include the following:

(1) Information adequate to show that the applicant is a prevailing party in an adversary adjudication or in a significant and discrete substantive portion of an adversary adjudication.

(2) A statement that the adversary adjudication is covered by the Act according to § 21.10.

(3) An allegation that the position of the Department in the adversary adjudication was not substantially justified, including a description of the specific position.

(4)(i) Information adequate to show that the applicant qualifies under the requirements of §§ 21.20 and 21.21 regarding net worth and number of employees.

(ii) If applicable, this information shall include a detailed exhibit of the net worth of the applicant—and its affiliates as described in § 21.21—as of the date the proceeding was initiated.

(iii) However, the net worth requirements do not apply to a qualified tax-exempt organization or a qualified agricultural cooperative association.

(5)(i) The total amount of fees and expenses sought in the award; and

(ii) An itemized statement of—

(A) Each expense; and

(B) Each fee, including the actual time expended for this fee and the rate at which the fee was computed.

(6) A written verification under oath or affirmation or under penalty of perjury from each attorney representing the applicant stating—

(i) The rate at which the fee submitted by the attorney was computed; and

(ii) The actual time expended for the fee.

(7) A written verification under oath or affirmation or under penalty of perjury that the information contained in the application and any accompanying material is true and complete to the best of the applicant's information and belief.

(b) The adjudicative officer may require the applicant to submit additional information.

(5 U.S.C. 504 (a)(2) and (c)(1))

§ 21.32 Confidentiality of information about net worth.

(a) In a preceeding on an application, the public record ordinarily includes the information showing the net worth of the applicant.

(b) However, if an applicant objects to public disclosure of any portion of the information and believes there are legal grounds for withholding it from disclosure, the applicant may submit directly to the adjudicative officer—

(1) The information the applicant wishes withheld, in a sealed envelope labeled "Confidential Financial Information"; and

(2) A motion to withhold the information from public disclosure.

(c) The motion must—

(1) Describe the information the applicant is requesting be withheld; and

(2) Explain in detail—

(i) Why that information falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act;

(ii) Why public disclosure of the information would adversely affect the applicant; and

(iii) Why disclosure is not required in the public interest.

(d)(1) The applicant shall serve on counsel representing the Department a copy of the material referred to in paragraph (c) of this section.

(2) The applicant is not required to give a copy of that material to any other party to the proceeding.

(e)(1) If the adjudicative officer finds that the information should not be withheld from public disclosure, the information is placed in the public record of the proceeding.

(2) If the adjudicative officer finds that the information should be withheld from public disclosure, any request to inspect or copy the information is treated in accordance with the Department's established procedures under the Freedom of Information Act (34 CFR Part 5).

(5 U.S.C. 504(c)(1))

§ 21.33 Allowable fees and expenses.

(a) A prevailing party may apply for an award of fees and other expenses incurred by that party in connection with—

(1) An adversary adjudication; or

(2) A significant and discrete substantive portion of an adversary adjudication.

(b) If a proceeding includes issues covered by the Act and issues excluded from coverage, the applicant may apply only for an award of fees and other expenses related to covered issues.

(c) Allowable fees and expenses include the following, as applicable:

(1) An award of fees based on rates customarily charged by attorneys, agents, and expert witnesses.

(2) An award for the reasonable expenses of the attorney, agent, or expert witness as a separate item if the attorney, agent, or expert witness ordinarily charges clients separately for those expenses.

(3) The cost of any study, analysis, report, test, or project related to the preparation of the applicant's case in the adversary adjudication.

(5 U.S.C. 504 (a)(1), (b)(1)(A), and (c)(1))

Subpart E—What Procedures Are Used in Considering Applications?

§ 21.40 Filing and service of documents.

Except as provided in § 21.32, an applicant shall—

(a) File with the adjudicative officer its application and any related documents; and

(b) Serve on all parties to the adversary adjudication copies of its application and any related documents.

(5 U.S.C. 504 (a)(2) and (c)(1))

§ 21.41 Answer to application.

(a)(1) Within 30 days after receiving an application for an award under this part, the Department's counsel may file an answer to the application.

(2) The Department's counsel may request an extension of time for filing the Department's answer.

(3) The adjudicative officer may grant the request for an extension if the Department's counsel shows good cause for the request.

(b)(1) The Department's answer must—

(i) Explain any objections to the award requested; and

(ii) Identify the facts relied on in support of the Department's position.

(2) If the answer is based on any alleged facts not in the record of the adversary adjudication, the Department's counsel shall include with the answer either—

(i) Supporting affidavits; or

(ii) A request for further proceedings under § 21.44.

(c)(1) If the Department's counsel and the applicant believe that the issues in the application can be settled, they may jointly file a statement of their intent to negotiate a settlement.

(2)(i) The filing of the statement extends for 30 days the time for filing an answer.

(ii) The adjudicative officer may grant further extensions if the Department's counsel and the applicant jointly request those extensions.

(5 U.S.C. 504 (a) and (c)(1))

§ 21.42 Reply.

(a) Within 15 days after receiving an answer, an applicant may file a reply.

(b) If the applicant's reply is based on any alleged facts not in the record of the adversary adjudication, the applicant shall include with the reply either—

(1) Supporting affidavits; or

(2) A request for further proceedings under § 21.44.

(5 U.S.C. 504(c)(i))

§ 21.43 Comments by other parties.

(a) Any party to a proceeding, other than an applicant or the Department's counsel, may file comments on—

(1) The application within 30 days after the applicant files the application;

(2) The answer within 30 days after the counsel files the answer; or

(3) Both, each within the times specified respectively in paragraphs (a) (1) and (2) of this section.

(b) The commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that further participation is necessary to permit full exploration of matters raised in the comments.

(5 U.S.C. 504(c)(1))

§ 21.44 Further proceedings.

(a) The adjudicative officer ordinarily makes the determination of an award on the basis of the written record.

(b)(1) However, the adjudicative officer may order further proceedings if he or she determines that those proceedings are necessary for full and fair resolution of issues arising from the application.

(2) If further proceedings are ordered, the adjudicative officer determines the scope of those proceedings.

(c) If the applicant or the Department's counsel requests the adjudicative officer to order further proceedings, the request must—

(1) Specify the information sought or the disputed issues; and

(2) Explain why the additional proceedings are necessary to obtain that information or resolve those issues.

(5 U.S.C. 504 (a)(3) and (c)(1))

Subpart F—How Are Awards Determined?

§ 21.50 Standards for awards.

(a) In determining the reasonableness of the amount sought as an award of fees and expenses for an attorney, agent, or expert witness, the adjudicative officer may consider one or more of the following:

(1)(i) If the attorney, agent, or expert witness is in private practice, his or her customary fee for similar services; or

(ii) If the attorney, agent, or expert witness is an employee of the applicant, the fully allocated cost of the services.

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services.

(3) The time the attorney, agent, or expert witness actually spent on the applicant's behalf with respect to the adversary adjudication.

(4) The time the attorney, agent, or expert witness reasonably spent in light of the difficulty or complexity of the covered issues in the adversary adjudication.

(5) Any other factors that may bear on the value of the services provided by the attorney, agent, or expert witness.

(b) The adjudicative officer does not grant—

(1) An award for the fee of an attorney or agent in excess of $75.00 per hour; or

(2) An award to compensate an expert witness in excess of the highest rate at which the Department pays expert witnesses.

(c) The adjudicative officer may also determine whether—

(1) Any study, analysis, report, text, or project for which the applicant seeks an award was necessary for the preparation of the applicant's case in the adversary adjudication; and

(2) The costs claimed by the applicant for this item or items are reasonable.

(d) The adjudicative officer does not make an award to an eligible party if the adjudicative officer, or the Secretary on review, finds that—

(1) The Department's position wasd substantially justified; or

(2) Special circumstances make an award unjust.

(e) The adjudicative officer may reduce or deny an award to the extent that the applicant engaged in conduct that unduly or unreasonably protracted the adversary adjudication.

(5 U.S.C. 504(a))

§ 21.51 Initial decision

(a) The adjudicative officer issues an initial decision on an application within 30 days after completion of proceedings on the application.

(b) The initial decision includes the following:

(1) Written findings, including sufficient supporting explanation, on—

(i) The applicant's status as a prevailing party;

(ii) The applicant's eligibility;

(iii) Whether the Department's position in the adversary adjudication was substantially justified;

(iv) Whether special circumstances make an award unjust;

(v) If applicable, whether the applicant engaged in conduct that unduly or unreasonably protracted the adversary adjudication; and

(vi) Other factual issues raised in the adversary adjudication.

(2)(i) A statement of the amount awarded, including an explanation—with supporting information—for any difference between the amount requested by the applicant and the amount awarded.

(ii) The explanation referred to in paragraph (b)(2)(i) of this section may include—

(A) Whether the amount requested was reasonable; and

(B) The extent to which the applicant unduly or unreasonably protracted the adversary adjudication.

(3) A statement of the applicant's right to request review by the Secretary under § 21.52

(4) A statement of the applicant's right under § 21.45 to seek judicial review of the final award determination.

(5 U.S.C. 504(a)(3) and (c)(1))

§ 21.52 Review by the Secretary.

(a) The Secretary may decide to review the adjudicative officer's initial decision.

(b) If the applicant or the Department's counsel seeks a review, the request must be submitted to the Secretary, in writing, within 30 days after the initial decision is issued.

(c) If the Secretary decides to review the initial decision—

(1) The Secretary acts on the review within 30 days of accepting the initial decision for review;

(2) The Secretary reviews the initial decision on the basis of the written record of the proceedings on the application. This includes but is not restricted to—

(i) The written request; and

(ii) The adjudicative officer's findings as described in § 21.51(b); and

(3) The Secretary either—

(i) Issues a final decision on the application; or

(ii) Remands the application to the adjudicative officer for further proceedings.

(d) If the Secretary issues a final decision on the application, the Secretary's decision—

(1) Is in writing;

(2) States the reasons for the decision; and

(3) If the decision is adverse to the applicant, advises the applicant of its right to petition for judicial review under § 21.54.

(5 U.S.C. 557 (b) and (c))

§ 21.53 Final decision if the Secretary does not review.

If the Secretary takes no action under § 21.52, the adjudicative officer's initial decision on the application becomes the Secretary's final decision 30 days after it is issued by the adjudicative officer.

(5 U.S.C. 557(b))

§ 21.54 Judicial review.

If an applicant is dissatisfied with the award determination in the final decision under § 21.52 or § 21.53, the applicant may seek judicial review of that determination under 5 U.S.C. 504(c)(2).

(5 U.S.C. 504(c)(2))

Subpart G—How Are Awards Paid?

§ 21.60 Payment of awards.

To receive payment, an applicant granted an award under the Act must submit to the Finance Office of the Department—

(a) A request for payment signed by the applicant or its duly authorized agent;

(b) A copy of the final decision granting the award; and

(c) A statement that—

(1) The applicant will not seek review of the decision in the United States courts; or

(2) The process for seeking review of the award has been completed.

(5 U.S.C. 504(c)(1))

§ 21.61 Release.

If an applicant, its agent, or its attorney accepts payment of any award or settlement in conjunction with an application under this part, that acceptance—

(a) Is final and conclusive with respect to that application; and

(b) Constitutes a complete release of any further claim against the United States with respect to that application.

(5 U.S.C. 504(c)(1))

[FR Doc. 84-21153 Filed 8-8-84; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[AMS-FRL-2609-4]

Control of Air Pollution From Aircraft and Aircraft Engines; Smoke Emission Standard

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This action denies a petition for reconsideration of the aircraft gas turbine smoke standard submitted by the General Aviation Manufacturers Association (GAMA) on March 17, 1983 and extends the compliance date of specified small engines until (one year from the date of publication). The petition is denied because EPA has concluded that the smoke standard is not excessively stringent as was claimed in the petition.

DATE: This action is effective September 10, 1984.

ADDRESS: Material relevant to this action is contained in Public Docket OMSAPC-78-1, located at the Central Docket Section, West Tower Lobby, 401 M Street SW., Washington D.C. 20460. The docket is open to the public and may be inspected between 8:00 am and 4:00 pm on weekdays. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Kittredge, U.S. Environmental Protection Agency, Office of Mobile Sources, (AR-455), 401 M Street SW., Washington D.C. 20460. Telephone: (202) 382-4981.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA aircraft engine emissions standards, as amended on December 30, 1982 (47 FR 58462), contain a provision that all turbojet/turbofan aircraft gas trubine engines must comply with a smoke standard which is expressed as a mathematical equation relating an allowable smoke limit inversely to engine-rated thrust (40 CFR 87.21). This standard was developed and adopted by the International Civil Aviation Organization (ICAO) in 1981 and was incorporated in the amended EPA standards in the interests of international harmonization. It superceded an earlier standard contained in the original 1973 EPA standards (38 FR 19088), which was of comparable stringency but expressed graphically.

On March 17, 1983 GAMA submitted a petition for reconsideration of the amended smoke standard, asserting that EPA did not consider comments it had submitted during the rulemaking process which argued that the standard proposed (similar but not identical to the standard adopted) was based on erroneous data and was inequitable as applied to small gas turbine engines. The petition went on to recommend an alternative standard which GAMA believed would be more equitable.

The Garrett Turbine Engine Company, a member of GAMA, also filed a petition for review of the 1982 amendments in the U.S. Court of Appeals for the District of Columbia Circuit.

In an agreement reached between EPA and Garrett, EPA stayed the date of compliance for engines rated below 26.7 kilonewtons (kN) thrust, so as to provide time for careful evaluation of the issues raised by the GAMA petition (48 FR 46481).

On January 4, 1984, EPA proposed (49 FR 422) that the GAMA petition be denied. The proposal explained that the 1979 EPA report cited in the GAMA petition did indeed contain erroneous data and also confirmed that the 1980 GAMA comments on the report had been overlooked in the rulemaking process leading to the 1982 amendments. However, the proposal went on to point out that the report was not used as a basis for the amended smoke standard, which was in fact based on an equation developed by British investigators to fit the 1973 EPA smoke curve in 1978, over

a year prior to publication of the EPA report. Since the 1979 report was not used in the rulemaking, EPA's failure to consider GAMA's comments was a harmless error. Moreover, reexamination of the optical basis for the amended smoke standard showed that it was not excessively stringent and that all but one of the engines in current production are in compliance. Accordingly, it was proposed that the GAMA petition be denied and recommended that the manufacturer of the single non-complying engine apply to the Federal Aviation Administration (FAA) for an exemption.

Three comments were received on the NPRM, from GAMA and Garrett Turbine Engine Company, both opposing denial of the petition, and from the British National Gas Turbine Establishment, verifying the history of the ICAO smoke standard.

II. Discussion of Issues

Garrett commented that a statement in the EPA report containing the erroneous data shows that the author believed the proposed revised smoke standard referred to in the report was based on 98 percent light transmission measured directly across turbine engine exhaust plumes. From this, Garrett reasoned that the original 1973 smoke curve must also have been based on 98 percent light transmission as a criterion for smoke plume invisibility. However, it is clear from a careful reading of the report that the author simply used the erroneous data to convert the EPA smoke-versus-thrust standard to smoke-versus-exhaust nozzle diameter units, to facilitate comparison with the Air Force smoke standard which is expressed in these units. The proposed EPA standard itself was unaffected by this process and the conclusion that it was based on 98 percent light transmission was incorrect.

The 1973 EPA smoke standard was developed over six years prior to the 1979 EPA report, by different EPA staff members using different data. It is not known what light transmission criteria, if any, were used as a basis for the standard, only that the goal was to derive a standard which would eliminate emissions of visible smoke from civil aircraft to the maximum extent achievable by available technology. No adverse comments were received on the 1973 EPA smoke standard until the 1980 GAMA comments and compliance was achieved before the January 1, 1984 compliance date by all but a single currently-produced engine type. The single engine type not complying with the standard, manufactured by Garrett, has been observed to produce readily visible smoke from aircraft in flight, contrary to the purpose and intent of the smoke standard.

EPA concludes that both the original 1973 EPA smoke standard and the amended EPA/ICAO standard are reasonably valid predictors of the threshold smoke limits for engines which power current civil aircraft and yet represent limits which are achievable with available engine combustor design technology. At this time EPA sees no reason not to continue with the present smoke standard and associated measurement procedure.

Both Garrett and GAMA questioned the equity of reliance on the exemption process as the sole avenue of relief for a manufacturer experiencing compliance problems, in part because they believe the standard itself is overly stringent but also because of their concern that a denial of an exemption request by FAA would inflict economic losses on the requestor out of proportion to the social value of compliance with the standard. EPA does not agree with this argument, since consideration of economic issues by FAA is very much a part of the exemption provisions described in § 87.7(c) of the EPA emissions standards. The cost of compliance with the smoke standard on any given schedule would likely be a major determinant in a decision to grant an exemption request.

Garrett asked that the compliance date be extended two or three years, instead of one year as proposed, to allow additional time to complete the development of smoke reduction technology for the TFE731 engine. However, since the original compliance date, January 1, 1984, has already passed, the one year extension originally proposed by EPA will allow considerably more than one year of additional leadtime for Garrett before an exemption becomes necessary. During this period it should be easily possible for FAA to complete evaluation of Garrett's exemption request.

Garrett also questioned the need for a standard as stringent as the present EPA/ICAO standard, stating that the more relaxed standard recommended by GAMA would be enough to protect the interests of the public. However, EPA has no reason to believe that the GAMA proposal would in fact ensure the absence of visible smoke under realistic flight conditions for aircraft powered by the small engines of interest to GAMA members. The present standard appears to accomplish this.

III. Action

Accordingly, this rulemaking action will deny the GAMA petition, lift the stay in implementation date for smoke standards applicable to small engines which was established on October 12, 1983, and establish a new compliance date for these engines, i.e. one year after the date of publication.

Several unrelated non-substantive corrections and deletions are also made to the standards. The definitions for "Instrumentation system", "Rated compressor discharge temperature" and "Reference Day conditions" and the abbreviations for "carbon dioxide" and "carbon monoxide" are eliminated as superfluous, since these terms are nowhere used in the standards as revised on December 30, 1982. In § 87.7(d)(4), the words "do not apply" are being inserted before the word "shall", since these words were inadvertently omitted when the revised rule was printed. In § 87.60(e), the word "of" is being changed to "or" following "Administrator."

IV. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore not subject to the requirements for a Regulatory Impact Analysis. This rulemaking is not major because it will result in adverse effects on the economy of less than $100 million. There are no discernible effects on competition, productivity, investment, employment or innovation. For these reasons, EPA has not prepared a formal Regulatory Impact Analysis.

This rulemaking action has been sent to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12291. Any comments from OMB and any EPA responses thereto are in the public docket for this rulemaking.

V. Impacts on Reporting Requirements

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine when a regulation will have a significant effect on a substantial number of small entities so as to require a Regulatory Flexibility Analysis. This regulation should have no significant effect on small entities, since it only affects a small class of engines not manufactured by small businesses. Accordingly, I certify that this regulation will not have a significant impact on a

substantial number of small entities. Therefore, no Regulatory Flexibility Analysis has been prepared.

List of Subjects in 40 CFR Part 87

Air pollution control, Aircraft engines.

Dated: July 30, 1984.

William D. Ruckelshaus,

Administrator.

PART 87—[AMENDED]

As set forth in the preamble, Part 87 of Title 40 of the Code of Federal Regulations is amended as follows:

Authority: Sec. 321, 301(a), Clean Air Act as amended (42 U.S.C. 7571, 7601(a)).

§ 87.1 [Amended]

1. In § 87.1 the definitions for "Instrumentation system," "Rated compressor discharge temperature" and "Reference day conditions" are removed.

* * * * *

§ 87.2 [Amended]

2. In § 87.2 the abbreviations for "CO_2, Carbon Dioxide" and "CO, Carbon Monoxide" are removed.

* * * * *

3. Section 87.7(d)(4) is revised to read as follows:

§ 87.7 Exemptions.

* * * * *

(d) * * *

(4) Applications for a determination that any requirements of § 87.11(a), § 87.31(a) or § 87.31(c) do not apply shall be submitted in duplicate to the Secretary in accordance with procedures established by the Secretary.

4. Section 87.21(e) is revised to read as follows:

§ 87.21 Standards for Exhaust Emissions.

* * * * *

(e) Smoke exhaust emissions from each gas turbine engine of the classes specified below shall not exceed:

(1) Class TF of rated output less than 26.7 kilonewtons manufactured on or after (one year from date of publication):

$SN = 83.6(ro)^{-0.274}$ (ro is in kilonewtons) not to exceed a maximum of SN = 50.

(2) Classes T3, T8, TSS and TF of rated output equal to or greater than 26.7 kilonewtons manufactured on or after January 1, 1984:

$SN = 83.6(ro)^{-0.274}$ (ro is in kilonewtons) not to exceed a maximum of SN = 50.

(3) Class TP of rated output equal to or greater than 1,000 kilowatts manufactured on or after January 1, 1984:

$SN = 187(ro)^{-1.65}$ (ro is in kilowatts)

* * * * *

5. Section 87.60(e) is revised to read as follows:

§ 87.60 Introduction.

* * * * *

(e) Other gaseous emissions measurement systems may be used if shown to yield equivalent results and if approved in advance by the Administrator or the Secretary.

[FR Doc. 84-21121 Filed 8-8-84; 8:45 am]

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40 CFR Part 147

[WH-FRL-2633-4]

Washington Department of Ecology; Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Washington has submitted an application under Section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for all classes of injection wells meets the requirements of Section 1422 of the Act and, therefore, approves it.

EFFECTIVE DATE: This approval shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on August 23, 1984. This approval shall become effective on September 24, 1984.

FOR FURTHER INFORMATION CONTACT: Harold Scott, Environmental Protection Agency, Region X, 1200 Sixth Avenue (M/S 409), Seattle, Washington 98101. PH: (206) 442-1846 or FTS 399-1846.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under Section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Washington was listed as needing a UIC program on June 19, 1979 (44 FR 35288). The State submitted an application under Section 1422 on March 5, 1984, for a UIC program to regulate Class I, II, III, IV, and V injection wells to be administered by the Washington Department of Ecology (WDE).

On March 21, 1984, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the WDE (49 FR 10555). Neither requests for public hearing nor requests to offer testimony at such hearings were received by EPA. Therefore, pursuant to the provisions of 40 CFR 145.31(c), the public hearing was cancelled because of lack of sufficient public interest.

After careful review of the application, I have determined that the portion of the Washington UIC program submitted by the WDE applicable on all State lands other than Indian lands meets the requirements established by the Federal regulations pursuant to section 1422 of the SDWA and, hereby approve it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for non-Indian lands in the State of Washington.

This approval will be codified in 40 CFR 147.2400. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA.

At the request of the Business Council of the Confederated Tribes of Colville, Washington, dated April 23, 1984, the public comment period for the Indian lands portion of the application was extended on May 25, 1984 (49 FR 22110). Therefore, this approval is for the regulation of all injection wells in the State except for wells located on Indian lands. EPA's approval of the State's